

Remarks

Claims 1-16, 33-54 and 62-102 have been allowed. Applicant respectfully requests the Examiner to review and consider the attached Information Disclosure Statement filed herewith view of the following remarks.

Information Disclosure Statement

Applicant submits herewith an Affidavit of Howard J. Kuster, Jr., dated September 22, 2004, ("Affidavit") in compliance with 37 C.F.R. § 1.56. This Affidavit was recently provided to Applicant in connection with a litigation involving U.S. Patent No. 6,308, 728 and/or U.S. Patent No. 6,395,417. Applicant notes that the affidavit includes various "statements" and "documentation" purportedly as evidence of the conception by Mr. Kuster of the subject matter of these patents. In particular, the Affidavit includes statements alleging that Mr. Kuster "recommended using a flexible liner made of heat-weldable, acid-proof roofing material", (Affidavit, ¶ 6, ll. 10-11) and that Mr. Kuster conceived of "'L'-shaped and corner barrier segments with slots within the vertical and/or horizontal portions thereof to allow for adjustability of rails..." (Affidavit, ¶ 5, ll. 2-4). One or more of the claims in the pending application include these (or similar) elements.

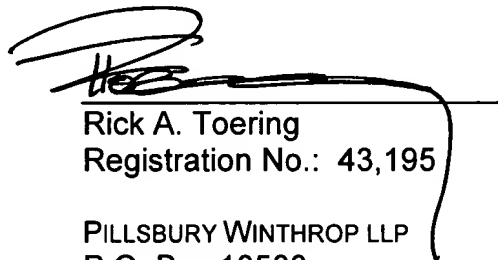
Applicant does not believe that Mr. Kuster is a co-inventor of any of the pending claims and that this litigation-induced Affidavit does not have sufficient corroboration to warrant further consideration. Nonetheless, Applicant requests that the Examiner consider whether a determination of a Correction of Inventorship under 35 U.S.C. § 1.116 is justified based on this Affidavit. If so, Applicant would be happy to provide additional information as necessary.

Conclusion

Applicant submits that the application is now in condition for allowance. Notice to that effect is requested. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned representative at the number provided.

Dated: December 3, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick A. Toering", is written over a horizontal line. The signature is stylized with a large, sweeping initial "R".

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